In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 672

JOSEPH GRANDINETTI AND THERESA GRANDINETTI,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The district court wrote no opinion. The opinion of the court of appeals (Pet. 20–21) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on October 14, 1964. The petition for a writ of certiorari was filed on November 12, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Petitioners were convicted of willfully attempting to evade federal income taxes. The questions presented are:

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1. Whether it was reversible error to allow proof of income by the net worth method or to admit, without objection, the government's summary of net worth increases and non-deductible expenditures.

2. Whether there was sufficient evidence of willfulness to sustain the conviction.

3. Whether the trial court should have instructed the jury that the government's proof must exclude every reasonable hypothesis other than guilt.

STATUTE INVOLVED

Section 7201 of the Internal Revenue Code of 1954, 26 U.S.C. 7201, provides:

> Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

STATEMENT

Petitioners were indicted for willful attempts to evade federal income taxes, the indictment alleging that they filed false and fraudulent joint income tax returns for the years 1956 through 1959. They were convicted after a jury trial and the court of appeals affirmed *per curiam*.

The evidence was as follows:

A sister of petitioner Theresa Grandinetti advised the Internal Revenue Service that petitioners' tax returns should be investigated and that petitioners had

told her that they did not report all their income (Tr. 297–298, 300–301).[1] The record of petitioners' bank deposits showed that they deposited annually about $20,000 to $30,000 more than the amount of gross receipts shown on their tax returns (Tr. 360–361). Petitioner Joseph Grandinetti told revenue agents that he kept no books or records, except separate sheets showing daily sales at his retail shoe store. He gave the agents various cancelled checks, check stubs, and bank statements, but told them that he had destroyed the sales sheets (Tr. 30–33, 307–308).

Petitioner Theresa Grandinetti, who testified that she prepared annual income schedules from sales records and then returned the records to her husband (Tr. 486–488), gave various explanations for the discrepancies between bank deposits and reported gross income. She first said that she reduced total sales and total purchases by 35 percent, because her husband sometimes sold shoes at a discount, below cost (Tr. 320–321). Later she said that she used no particular percentage, but altered the figures for sales and costs until the result approximated the total amount of cash which petitioners had on hand and in bank accounts at some time after January 15 each year (Tr. 367). At the trial, she testified that she applied a 17 percent reduction formula and then would add or subtract as necessary, "maybe 3,000, maybe 5,000, maybe 10,000," to get a new profit figure about equal to the amount of the bank balances (Tr. 463–464). She testified that she threw away the papers she used to work out her reduction formulas

[1] "Tr." refers to the transcript of the trial.

and gave the accountant who prepared the returns only the final figures (Tr. 487–488).

The government used the net worth and expenditures method to show petitioners' actual income. Witnesses testified concerning petitioners' payments to them for goods or services, life insurance, and investment in mutual funds, and as deposits in savings accounts. This evidence was summarized in Government Exhibit 30, showing that petitioners' true income greatly exceeded the income reported in their tax returns (Tr. 382–392). The correct amounts of tax based on true income were shown on Government Exhibit 31 (Tr. 394–399). Petitioners' attorney did not object to the admission of either exhibit or cross-examine the government agents who testified concerning them. (Tr. 384, 392, 396, 399.) Two sisters of petitioner Theresa Grandinetti testified that petitioners told them that they deliberately falsified their income tax returns (Tr. 274–280, 302–304).

In his argument to the jury, petitioners' attorney conceded that the tax returns were false and said that the jury had to decide only whether the falsity was willful. (Tr. 546.) He made no objection to the court's instructions to the jury and requested no additional instructions (Tr. 567).

ARGUMENT

1. None of petitioners' objections (Pet. 11–12, 15–18) to use of the net worth method to determine their income or to the presentation of a net worth summary was made at trial. The government's evidence showing increases in net worth and expenditures was in-

troduced without objection; nor was there any objection to the admission or use by the jury of the summary of that evidence. Not only did petitioners' attorney fail to object, but in his argument to the jury he expressly conceded that the tax returns were false, which was the ultimate fact which the evidence and summary of net worth were intended to establish.

In any event, petitioners' present objections are without substance. The only records which petitioners kept of their retail shoe business had been destroyed by them. There was a solid evidentiary basis, including a careful calculation of opening net worth (see Tr. 382–385), for the net worth proof of petitioners' income. After examining the trial record, the court of appeals concluded that the "government's showing concerning the defendants' income, though not consistent in all details, was sufficient to demonstrate a substantial understatement of income in each of the years in question" (Pet. 20).

2. The evidence of willfullness included the testimony of two sisters of petitioner Theresa Grandinetti that petitioners had said that they deliberately falsified their income tax returns. The jury had an opportunity to consider petitioners' explanation of the discrepancy between reported and actual income for each of the years in question and rejected it. There is no occasion for this Court to disturb the conclusion of the court of appeals that there was "an abundance of evidence of purpose to misrepresent income and thus evade taxes" (Pet. 20–21).

3. No objection to the instructions to the jury or request for additional instructions was made at trial.

The instructions which were given clearly and repeatedly directed the jury that petitioners should be acquitted unless the jury believed them to be guilty beyond a reasonable doubt (Tr. 554–555, 559, 566–567); particular reference in this connection was made to the issue of willfulness (Tr. 566–567). There was no requirement that the court instruct the jury that every reasonable hypothesis other than guilt must be excluded. Indeed, this Court has stated that "where the jury is properly instructed on the standards for reasonable doubt, such an additional instruction on circumstantial evidence is confusing and incorrect * * *." *Holland* v. *United States,* 348 U.S. 121, 139–140.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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DECEMBER, 1964.

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